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SEP 23 2005

In re Application of	:	OFFICE OF PETITIONS
Daniel M. Herzog et al	:	
Application No. 10/823,402	:	DECISION ON PETITION
Filed: April 12, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2316.1845US01	:	

This is a decision on the petition under 37 CFR 1.313(c)(2); filed August 24, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED as moot**.

Unfortunately, the instant petition was not received in the deciding official's office within sufficient time to avert the issuance of the above-identified application into a patent. The Office sincerely apologizes for any inconvenience caused petitioner in this matter.

Petitioner's attention is directed to 37 CFR 1.313(d), which states:

A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**.

Since this application has issued, the concurrently filed request for continued examination (RCE) is improper and will not be processed. In view thereof, the \$790 filing fee submitted therefor, as well as the petition fee of \$130, will be refunded in due course.

The Information Disclosure Statement has been placed of record in the file of the above-identified application without further consideration. See 37 CFR 1.97(i).

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions